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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/838,949	04/19/2001	Elia Rocco Tarantino	ZDICE.0017P	1704

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EXAMINER	
MOSSER, ROBERT E	

ART UNIT	PAPER NUMBER
3714	

DATE MAILED: 08/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/838,949	TARANTINO, ELIA ROCCO	
	Examiner	Art Unit	
	Robert Mosser	3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *01 November 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *28-50* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *28-50* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

♦

This action is final.

Claims 29-50 are pending.

♦

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims **39-41, 43-47,** and **49-50** are rejected under 35 U.S.C. 102(b) as being anticipated by Behm et al (5,560,610), Pollard (US 5,193,815), or Smith (5,411,260).

The Behm, Pollard, and Smith references teach all of the claimed features including:

the displaying of rows (**m**) and columns (**n**) matrix comprising the player game symbols where there are at least two rows and at least two columns are present in the matrix of player game symbols;

the selection and generation of a second matrix of main symbols with at least **n** columns and at least one row;

the comparison of the main symbols and the player symbols in order to determine any correspondence between the symbols through value and corresponding positions (by value and location);

declaring the player who receives a particular matching arrangement/combination of symbols within the player matrix a winner; and

embodied on a printed ticket which is understood to be operable by at east one player The above is demonstrated by Behm's figure 2, Pollard's figure 1, and Smith's figures 1 & 2.

Regarding the feature of displaying indicia of matching symbols as presented in at least claim(s) **43**, the presentation of two matching symbols (one in the main set and an additional in the player set) would seem to inherently meet this feature.

Regarding the feature of continuing the game until at least one player is declared a winner as presented in at least claim(s) **46**, this feature is considered to be inherent to the function of lotteries or wagering games of the type cited above.

Regarding the feature of generating a successive row of main symbols and then repeating the comparison against the player symbols as presented in at least claim(s) **49** and **50**, all the references presented above provide for multiple main rows and their comparison for the determination of game result.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims **29-30, 32-38, 42,** and **48** are rejected under 35 U.S.C. 103(a) as being unpatentable over Behm et al (5,560,610), Pollard (US 5,193,815), or Smith (5,411,260) as applied in the 35 USC 102(b) rejection above.

In addition to the presented limitations addressed in the above rejections the embodiment of the game symbols as die or images thereof opposed to numbers as presented is deemed a matter of design choice wherein no stated problem is solved or unexpected result is obtained. It would have been obvious to one of ordinary skill in the art at the time of invention to have utilized the image of dice juxtaposed to numbers in order establish a visual theme or provide a more interesting basis for the symbol reveals.

Claims **29-30, 32-38, 42,** and **48** are rejected under 35 U.S.C. 103(a) as being unpatentable over Behm et al (5,560,610), Pollard (US 5,193,815), or Smith (5,411,260) as applied in the 35 USC 102(b) rejection above and in further view of Makovic et al (US 4,443,012) or alternatively in further view of Russell (US 4,015,850).

In addition to the presented limitations addressed in the above rejections the embodiment of the game symbols as die or images thereof opposed to numbers is not

readily apparent in the Behm, Pollard, or Smith references. However Makovic and Russell teach the use of dice (die) in figure 2 of both patents centered on gaming. It would have been obvious to one of ordinary skill in the art at the time of invention to have utilized the image of dice juxtaposed to numbers in order establish a visual theme or provide a more interesting basis for the symbol reveals.

Claim **31** is rejected under 35 U.S.C. 103(a) as being unpatentable over Behm et al (5,560,610), Pollard (US 5,193,815), or Smith (5,411,260) as applied in the 35 USC 102(b) rejection above and in further view of Leake (US 5,624,119).

In addition to the presented limitations addressed in the above rejections the embodiment of an electronic display device is not readily apparent in the Behm, Pollard, or Smith references. However in a related matrix game Patent Leake teaches the use of such device. It would have been obvious for one of ordinary skill in the art at the time of invention to have incorporated the games of Behm, Pollard, and Smith with an electronic display in order to reduce the ability of the player to defraud the lottery vendor and/or reduce the long term cost of game operation and/or reduce the amount of waste generated by the game operation.

Response to Arguments

Applicant's arguments filed November 1st, 2004 have been fully considered but they are not persuasive.

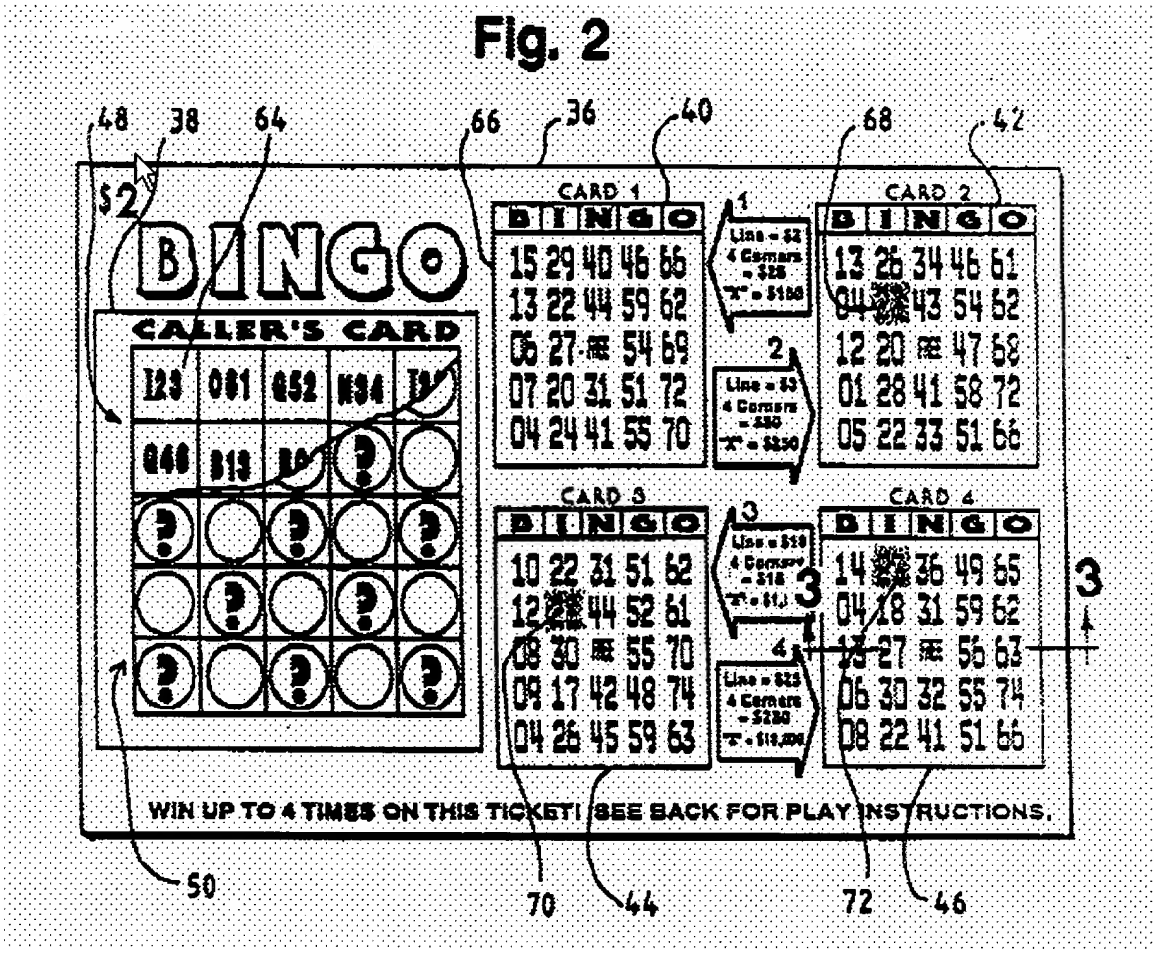
[*Newly amended claim language*]

"indicating a match only if said main symbol in a position matches said players symbol in the corresponding position as said main symbol; and"

The gravity of preceding amendment rests on the language "corresponding" and in this case the corresponding positions as claimed are not limited to the submitted exhibit A (response by applicant submitted 11-12004) and in fact such "corresponding" positions remain under the prevue of the prior art as the nature of the corresponding is not yet defined by the claim. Per instance the reference of Behm figure two (shown below) demonstrates "I-23" (element 64) with the corresponding position of I-23 on the second game card (element 68). In this presentation the corresponding position is defined by the properties of the symbol, namely the inclusion of a letter column designation "I".

[*For each exposed game number, the player determines if that game number has a match to any of the player numbers anywhere on the bingo cards*] (Page 9 remarks submitted 11-1-2004)

Applicant argues that the bingo type references allow for a match of player and main symbols at any given location on the game card of Behm, however in view of the preceding arguments and reference figure the corresponding position of per example "G49" would be fixed for every row present on each card (i.e. G49 could not ever appear in column labeled "B" on any of the four presented cards). Arguments on page number ten of Remarks with regards to claim 29 falls under the same premise.



Additionally thought he examiner believes that the applicant intends to encompass an embodiment in keeping with following hypothetical the claim language of

"29. (Hypothetical)

A method of playing a game comprising:

accepting a wager;

displaying a matrix of player game symbols, said matrix having m rows by n columns where n and m are two or more and whereby each row has n positions, said symbols comprising images of a die having a particular orientation;

displaying a set of main symbols, said main symbols comprising randomly generated images of a die having a particular orientation, said set of main symbols arranged into a row having the same number n symbol positions as in a row of player game symbols;

comparing said main symbols in each of said **n** positions of said row of main symbols to the corresponding **nth position** of player symbols in one of said rows of said matrix of player game symbols;

indicating a match only if said main symbol in a **nth** position matches said player symbol in the corresponding **nth** position as said main symbol; and

declaring a winning outcome if a player achieves a particular arrangement of matching symbols."

the applicant's presented claim language fails to incorporate such a definitive correlation. For the purposes of furthering prosecution and addressing such potential amendments as the preceding hypothetical example the application of the current "Bingo" type art would be no longer applicable under it's present interpretation however prior art such as bingo number display tables (USP 4218063 Not relied upon) in combination with more traditional bingo type references may still provide a basis for rejection under the current interpretation of prior art.

Further it is strongly suggested that the applicant consider the reference of Roberts (USP 5,772,510 Not relied upon) and in particular figure 2c elements 24b and 26 as they may apply to any future amendments.

Conclusion

The prior art of Roberts (USP 5,772,510) is made of record and not relied upon is considered pertinent to applicant's disclosure.

Roberts teaches a Lottery ticket system/method for determining game outcome based on the correlation of numeric elements.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Mosser whose telephone number is (571)-272-4451. The examiner can normally be reached on 8:30-4:30 Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris H. Banks can be reached on (571) 272-4419. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

REM

JESSICA HARRISON
PRIMARY EXAMINER